

E 440

.5

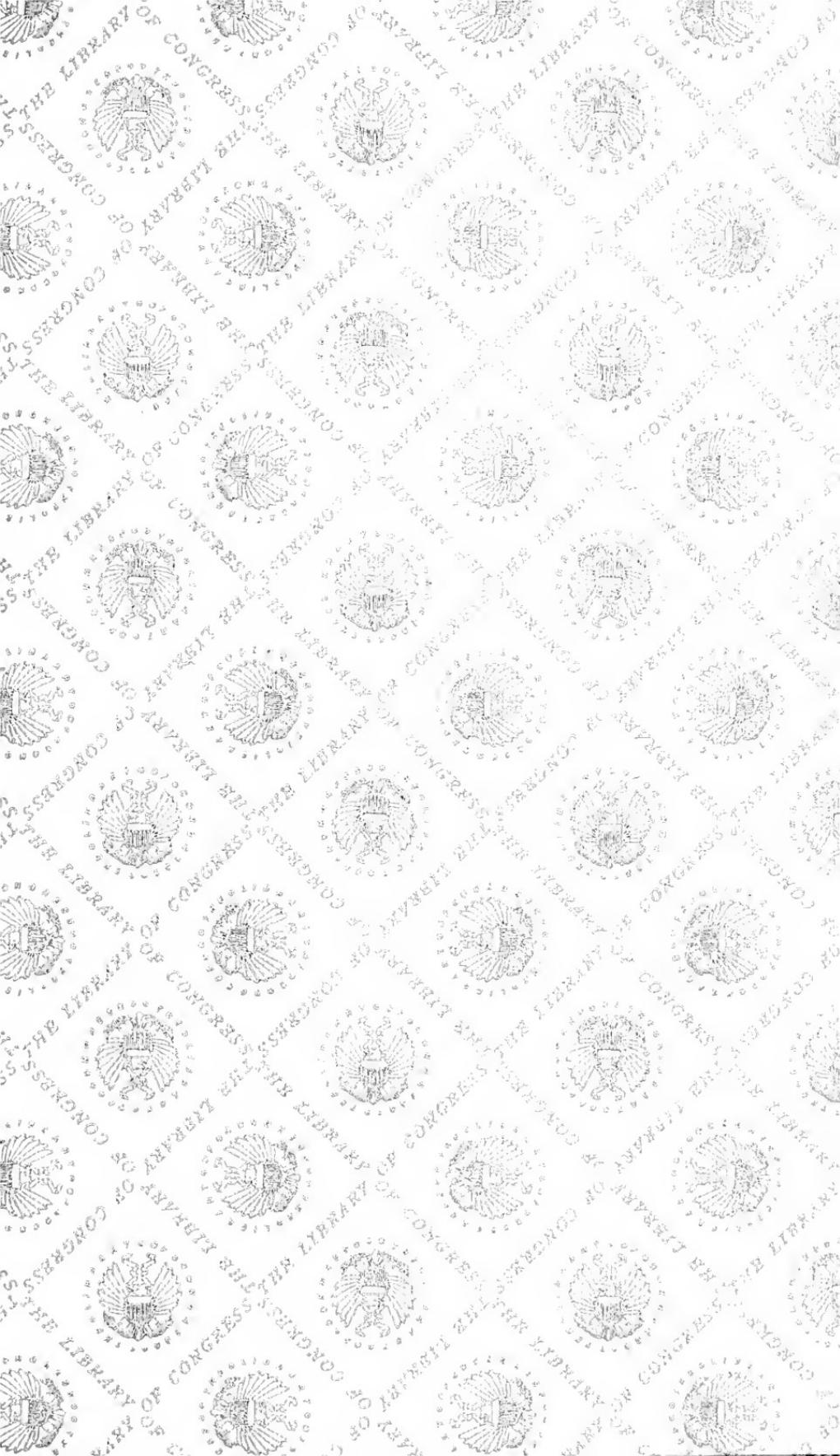
.C69

LIBRARY OF CONGRESS



0000174754A





S P E E C H

OF

HON. JACOB COLLAMER,

ON PRESENTING

A MEMORIAL FROM INHABITANTS OF SWANTON, VT.,

PROPOSING

AMENDMENTS TO THE CONSTITUTION,

DELIVERED

IN THE SENATE OF THE UNITED STATES, FEBRUARY 5, 1861.

WASHINGTON:
1861.

E 439
15
C 62

S P E E C H .

Mr. COLLAMER said:

Mr. PRESIDENT, I have a memorial which I desire to present. I present the memorial of J. Blake, and eighty-one others, inhabitants of Swanton, Vermont, praying for the adoption of the measure commonly known as the Border State propositions. It is rarely, I think, that I trouble the Senate, but I desire now to make some remarks, for which I beg indulgence for a few moments, in relation to this subject. I am not proposing to make remarks about secession, or coercion, or slavery, or the merits of any of these topics at all; but the petition which I have presented invokes the exercise of the power of Congress in relation to amendments to the Constitution. It is upon that topic that I wish to speak for a few moments.

Mr. President, I am willing at all times, when the occasion properly calls for it, to exercise the powers that we legitimately have by the Constitution; but, in my estimation, no exigencies can ever justify us in resorting to any sort of devices and expedients which the occasion may call for, that are not consistent with the fair construction of the provisions of that instrument. Now, sir, what is the true meaning, the fair import, of the powers which are given in the Constitution to Congress in relation to its amendment?

When the Constitution was adopted, and those who made it were about to put in exercise this great experiment, having created for the first time a General Government with all its departments, and curtailed in large proportion the powers which the States had previously exercised, to correspond with it, they said: "Now, it may be that this Constitution does not invest sufficient powers in the General Government for its smooth and successful operation. Experience may show that. What, then, shall be done in such a contingency? It will be a contingency in which Congress will have ascertained by experiment precisely what further power they need. We say, therefore, that when Congress have thus ascertained that they need any more delegated power, they shall have authority to propose amendments to the Constitution, which they shall send to the States or to the people of the United States (if you please) in their States, either in convention or in their legislatures, for their adoption; and if three fourths of them adopt them, they shall become a portion of the Constitution."

This was wanted for the use of Congress. No occasion was required for calling any national convention; but the occasion would be one which experience would develop, and which Congress would feel the need of, and such was the arrangement to meet that contingency. But they further said: "Perhaps upon experience and upon trial, it will turn out that we have transferred too much power from the States to

the General Government; it may work hard for the States; they may need to have amendments; now, what provision shall we make, what arrangement shall we prepare for such a contingency? It cannot be reasonably expected that Congress will, in such an event, make any propositions for amendment to strip themselves of power which has been already delegated to them. We, therefore, must not look to Congress for relief in such an emergency at all. Hence it was that provision was made in the same article for such an event, for such a contingency, by providing that if two thirds of the States shall pass resolutions requesting the call of a general convention for the purpose of proposing amendments to the Constitution, Congress shall call it.

They said, if the States want the Constitution amended, let them amend it as it was made, by a national convention; let them see each other all around; let them compare their views; let them see each other face to face, and then make such arrangements as the circumstances at the time may require; and when they have thus proposed their amendments, Congress shall send those propositions to the States, either in their Legislatures or their conventions, for adoption. It will be observed that in the latter arrangement the first leading feature is this: when the people or the States want amendments which they suppose they need, they are to have them whether Congress will or not; if they call a national convention in this way, Congress has no power to stop it, but is obliged to call it without knowing what amendments will be proposed. The States are not bound, in their resolutions which ask for a general convention, to state what amendments they want; but simply to declare that they want a convention; and Congress, in case two thirds of the States join in the call, is bound to call it. And again, when it is called, and it proposes amendments, Congress has no right to examine into the merits of those amendments, but is bound to send them out to the States at once. It is imperative on Congress to do so.

Hence it is we see, Mr. President, provision is here made that amendments to the Constitution are to come from those who want them. No idea entered into their heads in those days that the old rule of common sense would be overthrown, which is, that propositions for relief of any kind should come from those who want it, and not from those who do not want it. Now, let us apply this to our present condition. Does this General Government feel the want of any more delegated power? Has experience shown that our General Government does not operate smoothly for the want of some other delegated power that we need? Not at all. No one suggests anything of that kind; we want nothing of that kind. What next? What is wanted, or what is said to be wanted? It is said that a number of the States desire amendments to the Constitution for their security; I am not about to enter into the merits of those amendments; but I say that is said to be the case. Now, is it not, from the provision of the Constitution to which I have alluded, perfectly obvious as to how such an object is to be reached? I think it is clear; it leaves no doubt about it. Well, sir, have any of these States ever made any attempt to call a national convention to get a redress of grievances according to the Constitution? Not one. Some of them

have flown into secession: others are threatening it; but not an attempt has been made by any of them to get any redress within the Constitution at all. I have nothing to say of that, particularly; but I say that Congress ought not to undertake to exercise the power which is given to get amendments which they need, for the purpose of getting amendments for the States, which it is said they need. It is to pervert the uses for which it was given to them by so doing. Such attempts will always fail; and it is obvious why they will fail. First, we undertake to *conjecture* what the States want. We are going about here framing amendments to send out to the people. What amendments? Anything we want or need? No; but something which it is *conjectured* the States need. Who knows what they need? Who knows what they want? Who knows what they will be satisfied with? Have they manifested it to us? In no way. It is a mere matter of conjecture; and however much respect I may have for the source from which these conjectures come, still for all I cannot but see that it is a lame and impotent attempt to use a power which was granted for one purpose to effect another and an entirely different one.

Now, Mr. President, let me go a little further, to show its inapplicability. Suppose we agree to the amendments here. Have the people of the different States ever seen each other in convention, and understood each other's views about them? Never at all; but we are going to make them up here, and invent them ourselves, initiate them, and send them out to the States, and ask them to act upon them without ever seeing each other at all. The attempt never can succeed. In the nature of the thing, it cannot succeed. The provision of the Constitution is not adapted, never was meant, to secure any such purpose by the action of Congress, originating amendments for the States, which they have not asked for.

The conclusion, then, I come to, after what reflection I can give it, is that, as I view this part of the Constitution—which I think very clear when read and considered in the light of the circumstances in which it was made—I never can undertake to participate here in undertaking to make up, and invent, and contrive, and conjecture amendments for States which the States themselves have never asked for. I think it is entirely malapropos. It will be entirely unsuccessful; and the very fact now that you find such odds and ends, such various opinions about what they shall be, and a thousand projects that are presented to us, the very fact that you find yourselves in this condition, manifests that the principle which I state is right. It shows that you are in this condition because you are trying to use an instrumentality which you have for one purpose for another, for which it was never prepared, and to which it is not at all adapted. Now, Mr. President, I have one other—

Mr. BIGLER. I ask the Senator from Vermont to tell us how he reconciles the theory which he lays down with the fact that the very first amendment made to the Constitution with reference to the sovereignty of States was submitted by Congress?

Mr. COLLAMER. I will answer you entirely, if you will hear me through.

The PRESIDING OFFICER. It is the duty of the Chair to announce that the hour for the special order has arrived.

Mr. COLLAMER. I hope I shall be allowed to go on. [“Certainly!” “Certainly!”]

Mr. FOOT. I hope, by common consent, the special order will be passed over informally, until my colleague shall have concluded his remarks. I presume the whole Senate are desirous to hear him upon this point. [“Certainly!”]

The PRESIDING OFFICER. If there be no objection, the Senator may proceed. The Chair hears none.

Mr. COLLAMER. I have said nothing, and shall say nothing which can possibly involve the feelings of different sides, or different parties in the Senate. At this time, I have nothing to say about that. I rise to make remarks due to myself in relation to the memorial which I have presented, which invokes the exercise of the power of Congress in relation to constitutional amendments.

An illustration may be drawn from our history, in confirmation of the principles which I have stated. In the election of President of the United States, in 1801, it was found that the arrangements which had been made in the Constitution did not operate smoothly. There was almost a failure in the government. Congress then thought the contingency had arisen for which this provision was made, and Congress proposed an amendment in order to be relieved of that difficulty. They sent it out to the States. That was exactly what Congress ought to have done. It was adopted.

I come now to another thing, which I was just about to speak of when the Senator from Pennsylvania interposed. It is quite easy to imagine—and our own history presents a precedent for it—this state of things. Suppose, for instance, a State, or a certain number of States—not two thirds—do not desire to call a general convention, either because of a want of time or some other excuse, no matter what; they desire no general revision; they only desire one or two particular amendments; and suppose that one, two, three, or more States, in like condition and circumstances, should state to us that they desired the following articles of amendment to be adopted as part of the Constitution of the United States, (naming them,) and they present these to Congress, with the petition or request that Congress will submit them to the conventions or the Legislatures of the different States for adoption; now suppose such a state of things presents itself: how would that fall within the principles which I have before remarked upon? When Congress prepares amendments to the Constitution, and sends them to the people, they express their approbation of them; it implies that they are their amendments; they make them—and it requires two thirds to do it; which implies, I take it, the exercise of their judgment, and a judgment so decisive as will carry two thirds of the Senate and of the House of Representatives. They are the amendments which Congress want, and which Congress approve.

But suppose one, two, or three States should draw up some amendments that they say they do want; not that we conjecture at; not that we guess; but which they say they do want: what will you do in such a case? Suppose some of the States prepare and reduce to proper

form the amendments which they desire; and they have so much confidence in their sister States that they are willing to submit them to them; for that very desire and request to submit them implies a confidence; now, what should Congress do on an occasion of that kind? I think it is quite clear what they should do. I believe Congress should not pass on the merits of those amendments. It is a petition, a respectful petition, a suitable petition. I think that Congress should not present them as their amendments. Well, how would you do it? I would do it in this way. I would recite that whereas such and such certain States (naming them) had prepared such and such articles of amendment to the Constitution, and had presented them to Congress, and had requested Congress to submit them to the States, therefore, and in pursuance of that request, Congress present them to the States for adoption; and do it by the two-thirds majority required by the Constitution to render the proposal effective.

I grant, when they are amendments which Congress prepared, undoubtedly it is implied that they express their approbation of them; but in the case I am supposing, and which I consider a middle case between the two, no approbation or disapprobation of Congress is expressed or implied, nor is it necessary. Let me read the article:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

It does not say that Congress shall recommend the amendments, or any of them. It is said that they shall *propose* the amendments, but not that they shall *recommend* them. I think Congress, when there is a respectful petition by any State for certain articles of amendment, should pass such a joint resolution as I have just indicated, with the recital or preamble thereto.

Now, I come to the case that the Senator from Pennsylvania alludes to. When the States adopted, in their several conventions, this United States Constitution, several of the States recommended certain amendments; a number of the States did; I do not know whether two thirds, or all; but a number of them recommended certain amendments to the Constitution. What did Congress do with them? They were not amendments that Congress prepared. What did they do? The States, in their conventions, had requested these amendments to be adopted. What did Congress do? I will turn gentlemen to what they did on that occasion, as, if you please, a precedent for what I state. In 1789, in the First Congress, was passed the following:

"The conventions of a number of the States, having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which articles, when ratified by three fourths of the said Legislatures, to be valid, to all intents and purposes, as part of said Constitution."

There is a direct precedent for the case to which the gentleman from Pennsylvania calls my attention ; that is the very case which I have now supposed. There the States, or several of them, did request amendments to be made, stating what they were, and Congress did not propose those amendments, as theirs, but they passed a joint resolution, stating the fact that several States had requested those amendments to be made, and therefore they presented them to the people for adoption. That was the very case. That is in confirmation of my view. It is a direct precedent.

Now, Mr. President, without taking up the time of the Senate, which I dislike to do exceedingly, these views govern me in my action in relation to amendments to the Constitution, though they probably may not govern anybody else. I should like to have them understood more at large, because I think the people have been, somehow or other, led to look to Congress for relief by constitutional amendments ; when the powers of Congress, as I understand them, are utterly unadapted to them. But I cannot say, as I frequently hear said in this body, that I desire to speak to the country. I have no idea that the country will ever hear what I say about it ; but still I have presented my views of what I regard true duties.

And now, I have to say that, though I see little prospect of amending in this way, confident it can never succeed, yet after all something may be done. I have nothing to say about calling a national convention. That is a matter for the States and the people to do as they please upon. It is perfectly evident from the Constitution, that it was intended to be called whenever it was desired by the States, without any action of Congress at all : but even in despite of its opinion, if you will. Though men may not agree upon amendments here, may not agree upon amendments in the conference that is going on now in this city, I can still conceive it possible that two, or three, or more States might agree on some amendments, and send them here, as is proposed in the resolutions of Virginia, with the request that we should send them out to the Legislatures of the States. I say I can conceive that that contingency may happen, and my mode of treating that subject would be what I have indicated. I think, in my humble judgment, that on such a contingency Congress should pass a resolution, such as they did in 1789, reciting that this had been requested, and presenting it to the people by a two-thirds vote, and not stand up and say they did not like the amendments, and would not permit the people to have a chance to vote on them. Such are my views, sir.

The memorial was ordered to lie on the table.

